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ABSTRACT

This paper provides a general overview of selected questions and issues related to nonresident student enrollment in state institutions of higher education. The intent of the report was to analyze issues concerning nonresident student enrollment, the types and source of constraints placed on nonresident enrollment, and selected constitutional and statutory considerations involved in and determining residency. The methodology of the study included a review of current literature on nonresident enrollment, case law on residency issues, and surveys of state higher education agencies and public institution members of the constraints on resident enrollment. The report is written in three major sections. The first section reviews student migration trends and serves as background information for subsequent sections. Section 2 deals with the nature of nonresident enrollment constraints and contains a review of results of the state and institutional surveys. Section 3 introduces case law related to constitutional and statutory issues. The introduction is an overview of case laws and is not intended to be definitive since it is viewed from an educator's perspective rather than from the perspective of a legal specialist. (Author/KE)

NONRESIDENT STUDENT ENROLLMENT IN STATE INSTITUTIONS OF HIGHER EDUCATION: AN OVERVIEW

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Forward

This paper provides a general overview of selected questions and issues related to nonresident student enrollment in state institutions of higher education. In the context of this report the term nonresident student refers to an out-of-state student. The intent of the report was to analyze issues concerning nonresident student enrollment, the types and source of constraints placed upon nonresident enrollment, and selected constitutional and statutory considerations involved in determining residency.

The methodology of the study included a review of current literature on nonresident enrollment, case law on residency issues, and surveys of state higher education agencies and public institution members of the Association of American Universities to determine the nature and source of constraints upon nonresident enrollment.

The report is written in three major sections. The first section reviews student migration trends and serves as background information for subsequent sections. Section two deals with the nature of nonresident enrollment constraints. This section reviews results of the state and institutional surveys. Section three introduces case law related to constitutional and statutory issues. This section is an introduction and overview of case law and is not intended to be definitive since it is viewed from an

educator's perspective rather than from the perspective of a legal specialist.

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Introduction

Should states impose controls, either formally or informally, which would limit or restrict the number of out-of-state students that desire admission to public institutions of higher education? In recent years this topic has commanded the attention of public sector decision-makers of whom college and university administrators have undoubtedly been among the most actively involved. Generated in large measure by questions raised by state legislators, the nature of the issues surrounding nonresident enrollment in public institutions of higher education have broad implications. While legislators have been the focus of much impetus for decisions on nonresident enrollment quotas or constraints, faculty, students, alumni and the general public have also provided input to the discussion.

The nature of this issue and hence of its resolution depends primarily upon the particular perspective of the groups involved in the dialogue or debate. When one moves beyond the value orientations and vested interests of the debaters on whether there should be nonresident enrollment quotas, three major areas of policy inquiry concerning the implementation of quotas can be identified. These three areas of inquiry may be characterized as follows and will be treated separately in this report:

- The nature of nonresident enrollment constraints imposed either by a state or by an arm of the state

(e.g. a state coordinating council) or imposed voluntarily by individual colleges and universities.

- The source of these rules. The question here is whether a state law, an administrative guideline, a budget formula, or other sources specify for the college or university in statutory or practical terms the level of its out-of-state enrollment.

- The nature of establishing residency. The question here is concerned with how a student may qualify for residential status. Of principal importance would be the "constitutional and statutory' issues involved in this determination.

Prior to an examination of these factors, a brief review of the migration trends of college students during the recent past and the impact these trends have had upon nonresident enrollments may be helpful.

STUDENT MIGRATION TRENDS

During the past thirty or so years, the migration of college-bound students throughout the United States has increased dramatically as have total enrollments in our colleges and universities. Institutions of higher education witnessed an increase of over 5 million students during the period of 1938 through 1968.[1] Of this number, approximately 25% represented students who migrated to colleges and universities outside of their home state. All migrants, both in the public and private sectors, have increased in absolute numbers although not as a percentage of total enrollments during this period. For example, nonresident students comprised 19.4% of total enrollments in 1938 and by 1968 this percentage had decreased to 16.8%. When viewed either from a public or private perspective, a different pattern emerges. In privately controlled institutions of higher education nonresident enrollments have increased steadily since 1949 while nonresident enrollments in publicly controlled institutions have steadily decreased in the same time period.[2] Several factors appear to account for this phenomenon. Traditionally, private colleges and universities have attracted out-of-state students. Most recently, with the stabilization of enrollments, overall, the private sector has

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[1]Thomas E. Steahs and Calvin F. Schmid, "College Student Migration in the United States", Journal of Higher Education, Volume XLIII, Number 6, June, 1972, pp. 444-445.

[2]Ibid

had no other alternative but to enlarge their applicant pool of out-of-state students to increase enrollment in an attempt to achieve a balanced budget.[3] In the public sector nonresident enrollments have decreased significantly since 1963[4] due, in large measure, to two distinct yet interrelated factors:[5]

- ...the rapid proliferation of public junior or community colleges and the concomitant mushrooming of enrollments in these institutions; (and)
- ...the erection of a variety of barriers by many states to stem the influx of out-of-state college students. These barriers include prohibitively high levels of tuition, achievement and aptitude admission standards that are higher for nonresidents than for residents, and outright quota restrictions.

The unparalleled growth of the higher education industry during the 1960's created a vacuum which precipitated and stimulated the development of the community college system and conversely served to control the flow of students to out-of-state institutions. In order to accommodate this unprecedented influx of students, many public four-year institutions expanded their facilities considerably incurring large capital outlay expense. As such, several state legislatures, as early as 1963, acted to reduce the in-migration of nonresident students through the erection of a variety of barriers principally to relieve the

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[3]Garland G. Parker, College and University Enrollments in the United States, Iowa City: The American College Testing Program, 1973, p. 5.

[4]Steahs and Schmid, p. 445.

[5]Robert H. Fenske, Craig S. Scott, and James F. Carmody, "Recent Trends in Studies of Student Migration." Journal of Higher Education, Volume XLV, Number 1, January, 1974, p. 71.

additional financial burden of subsidizing nonresident education.[6]

Even though these factors have served to restrict the out-migration of students and recent trends indicate a general leveling off of nonresident enrollments, the fact remains that in terms of absolute numbers an increase in students migrating across state boundaries can be anticipated. Lack of educational opportunity within a student's home state appears to be the principal factor in out-migration[7] and will no doubt continue to cause students to cross state boundaries to obtain an education which is perceived to meet the unique needs of these students. This problem is perhaps exacerbated in institutions of higher education which aspire to a national character or those with an established national reputation because these institutions generally have a higher proportion of nonresident students than do others. In recent years institutions of this type have witnessed a movement both on and off campus, led principally by state legislators and in-state students to restrict nonresident enrollments ostensibly to provide more space for resident students. The University of Virginia, for example, which has traditionally had a higher proportion of nonresident students than any other comparable public institution in the United States, addressed

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[6]R. M. Hendrickson and M. Edward Jones, "Nonresident Tuition-Student Rights v. State Fiscal Integrity", Journal of Law and Education, Volume 2, Number 3, July, 1973, p.455.

[7]Ibid.

this issue in its Self-Study Summary Report in a most eloquent manner:[8]

> The Committee believes that the matter of greatest urgency at the moment is the clarification of the University's proper relationship to the Commonwealth, whose citizens support it. Clearly, it is just and appropriate that the University recognize its responsibility to develop the human resources of the Commonwealth through providing higher education of the highest quality. This purpose cannot be served, however, if academic standards are endangered and the University's national character lost through the imposition of a quota system designed to limit out-of-state enrollment and to ensure, artificially the admission of a fixed number of Virginians. If the ultimate objective of the University is the achievement of excellence in intellectual pursuits and in professional training, what is required is an admissions policy that will identify the brightest, most creative and intellectually curious applicants and admit them without regard to age, sex, race, creed, or citizenship.

Doubtlessly other institutions have expressed similar convictions. Academic quality and intellectual excellence, the major theme of this and other such reports, appears to be the primary argument proffered for nonresident enrollments. Faculty generally express this attitude in terms of prefering a broad student mix. The obvious question implied here is whether a broad student mix contributes to a better and hence more preferable educational environment than a more homogeneous in-state student population. Fenske, Scott, and Carmody in a recent study of student migration trends reported the following

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[8]Elaine M. Hadden, (ed.), Self-Study Summary Report, University of Virginia, Charlottesville: University of Virginia, August, 1974, p.20.

profile of the typical interstate migrant:[9]

> Students who migrated to an adjacent or distant state in both 1966 and 1969 were likely to have ... better-than-average ACT Composite Scores, educational expectations at or beyond a bachelor's degree, a rural or suburban home community, a moderate-to-high income family, no plans to work part time, little importance placed on low cost as influencing their choice of college, and greater influence placed on such factors as national reputation and special curriculum.

On the other hand, the typical nonmigrant yielded the following profile:[10]

> Conversely, students who attended locally in both 1966 and 1969 were much more likely than interstate migrants to have low high school grades, low ACT Composite Scores, low educational expectations, urban backgrounds, and low to lower-middle family income. They expected to work more than half time and stated that "low cost" was a major consideration as a college choice factor.

When this profile is compared against that of the migrating student, the choice is obvious from a purely academic quality and excellence type of argument, but hardly realistic or just in terms of equality of educational opportunity. The argument carried to its extreme, in actuality, would create a system of higher education stratified on the basis of socioeconomics or elitism - a philosophy counter to that of American ideals and democracy. However, this is not what is intended when faculty speak of a "desirable student mix" but oftentimes this is exactly what the general public and state legislators, in particular, perceive.

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[9]Fenske, Scott, and Carmody, op. cit., p.73.

[10]Ibid., p. 73

Quite to the contrary, a "desirable student mix" refers to the added benefits that an institution, its faculty, and its students - both resident and nonresident alike - receive when a diversity of geographic and economic backgrounds are represented on the campus. The recognition on the part of state policy makers that an institution with national reputation and clientele is a significant state resource and an integral facet of a strong pluralistic public system of higher education is required if the state is in fact, committed to quality educational opportunity.

If we may add an observation at this point it appears that the rationale for including nonresident students as adding to the quality of education at their institution of enrollment has not been adequately documented. While most policy makers at the institutional level cite nonresident enrollment as a means of combating provincialism and contributing to the diversity of educational experience, meaningful research on the question of quality must be conducted. This is a question which must be addressed in the years ahead if a meaningful understanding of the educational impact of nonresident students is to be achieved, and this will require documentation of the criteria of quality.

THE NATURE OF NONRESIDENT ENROLLMENT CONSTRAINTS

Several states have recently imposed limits or controls on the number of out-of-state students that may be admitted to public institutions of higher education. The imposition of quotas, differential admissions and tuition policies appear to be the primary mechanisms through which nonresident enrollments are restricted. Closely allied with each of these practices, and perhaps more so with differential tuition policies, the question of how a student may qualify for residential status and hence qualify for lower in-state tuition is also a major concern. A considerable body of legal precedents have evolved during the past ten-or-so years which bear directly on the issue. These developments, as such, will be discussed in a separate section; this section will examine the primary mechanisms which are employed to limit nonresident enrollments.

Admission Quotas

Quotas limiting the number of nonresident students that may be matriculated are, in general, imposed directly through a state legislature, a state coordinating board or agency, the governing board of an institution, or by the administrative officers within an institution. The quota set by an individual college or university is usually determined by the employment of percentage or finite numbers formulae. In the former, a fixed percentage of total student enrollment or just of the entering freshmen class is determined. In the latter, for example, a quota of 1500 entering

freshmen and 500 transfer students (or some variation thereof) may have been set.[11]

Enrollment ceilings may be set by the states in at least two ways. The state can, as a matter of public policy, establish enrollment ceilings at any of its public institutions and secondly, the state can, through its annual budget cycle, effectively limit nonresident enrollments by a pre-determination of the enrollment level which will be supported by state funds. In actuality, some states, most notably California, utilize both of these devices to regulate and/or manipulate the flow of students within the state's higher education system.[12]

State Survey

In an attempt to assess the magnitude of state involvement in controlling nonresident enrollment in public institutions of higher education a survey of policies and practices in all fifty states was undertaken. The survey, addressed to the chief executive officer of the state coordinating/governing board in each state, was designed to assess the locus of control, if in existence, and the nature of the control.

The majority of states responding indicated that few, if any, controls had been placed on the regulation of out-of-state students.

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[11]Robert F. Carbone, Students and State Borders, Iowa City: The American College Testing Program, 1973, p. 15.

[12]L. A. Glenny and T. K. Dalglish, Public Universities, State Agencies, and the Law: Constitutional Autonomy in Decline, Berkeley: Center for Research and Development in Higher Education, 1973, pp. 70-71.

This was particularly true for undergraduate enrollments. In graduate enrollments, especially in medicine and law, several states* have imposed quotas although these, for the most part, have been established by the individual institutions concerned rather than through state legislation or administrative regulation. Interestingly, a few states who have established quotas for undergraduate nonresidents, most notably Hawaii, are beginning to reassess these policies in light of current national enrollment trends.

Specifically, of the 46 states from whom data was collected, 14 have some type of quota system. Three of these (Delaware, Michigan, and New Hampshire) have legislatively imposed controls while the remaining states control nonresident enrollments through state coordinating/governing boards. There appears to be little difference between those states which have legislatively mandated controls and those who control the admission of nonresidents through state coordinating/governing boards. The only difference being that legislative controls are more visible to the general public. In those states which do not impose admission quotas, two states, Colorado and Illinois, charge nonresidents 100% of the instructional costs with the remaining states imposing varying degrees in the tuition-differential. Table I presents a state by state review of quotas imposed denoting by whom the control is

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*Alabama, Arizona, Colorado, Connecticut, Georgia, Ohio, Nevada and Texas.

Table I

State Review of Undergraduate Nonresident Quotas

Locus of Control and Resulting Limitations*

State	Quota Imposed	By Whom	Limitation
Alabama	No		
Alaska	No		
Arizona	Yes	Arizona Board of Regents	27.5%
Arkansas	No		
Colorado	Yes	Colorado Commission on Higher Education	15%
Connecticut	No		
Deleware	Yes	Legislature	25%
Florida	Yes	State University System of Florida	10%
Georgia	No		
Hawaii	Yes	Board of Regents of the University of Hawaii	10%-Community Colleges 20%-University Campus
Illinois	No		
Indiana	No		

Table I (cont.)

State	Quota Imposed	By Whom	Limitation
Iowa	No		
Kansas	Yes	State Coordinating Board	15%
Louisiana	No		
Maine	No		
Maryland	No		
Massachusettes	No		
Michigan	Yes	Legislature	20%
Mississippi	No		
Missouri	Yes	The Missouri Commission on Higher Education	15%
Montana	No/Yes	Montana Board of Regents	Nonresident may not be admitted if he displaces a resident
Nebraska	No		
Nevada	No		
New Hampshire	Yes	Legislature	25%
New Jersey	No/Yes	Informally (Not enforced)	5% State Colleges 10% Rutgers

Table I (cont.)

State	Quota Imposed	By Whom	Limitation
New Mexico	No		
New York	No		
North Carolina	Yes	Board of Governors of the University of North Carolina	15% in (6) institutions
North Dakota	No		
Ohio	Yes	Ohio Board of Regents	20%
Oklahoma	No		
Oregon	Yes	State Coordinating Board	15-16%
Pennsylvania	Yes	State Policy	5%
Rhode Island	No		
South Carolina	No		
South Dakota	No		
Tennessee	Yes	Tennessee Higher Education Commission	15%
Texas	No		
Utah	No		
Vermont	No		

Table I (cont.)

State	Quota Imposed	By Whom	Limitation
Virginia	No		
Washington	No		
West Virginia	No		
Wyoming	No		

* This compilation represents those states responding to the survey.

regulated and the resulting limitation.

Survey of Public Institution Members of the Association of American Universities

In order to ascertain the degree to which institutions of higher education catagorized as Type 1.1 and 1.2 by the Carnegie Commission[13] were enforcing state or institutional policy relative to nonresident quotas, the investigators administered a mail questionnaire to each public member institution of the American Association of Universities. This population of institutions was chosen because they were assumed to be the cadre of institutions who might be considered as having a national character and therefore most impacted by quotas. The survey instrument was designed to yield three distinct types of data:

- Enrollment levels stratified by a resident/nonresident classification for undergraduate and graduate and professional students.
- Locus of control employed and the resulting limitations for undergraduate, graduate, and professional enrollments.
- A determination of the advisability of imposing limits or controls to restrict nonresident enrollments.

Of the 22 public member institutions, 19 or 86.4% responded to the survey. One response was discarded as the data reported were not compatable with the needs of the survey. Table II sets forth total enrollment data for the 18 institutions. As noted

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[13]The Carnegie Commission on Higher Education. A Classification of Institutions of Higher Education. Berkeley: The Carnegie Foundation for the Advancement of Teaching, 1973.

Table II

Total Opening Fall 1974 Enrollment of Institutions Surveyed By

Resident and Nonresident Classification

Institution	Undergraduate				Graduate & Professional				Total
	Resident	%	Nonresident	%	Resident	%	Nonresident	%	
University of Illinois	43,362	96.3	1,625	3.7	10,412	75.6	3,350	24.4	58,749
University of California	81,952	96.0	3,329	4.0	22,242	66.2	11,331	33.8	118,854
Pennsylvania State University	42,330	95.2	2,134	4.8	4,589	72.9	1,701	27.1	50,754
University of Washington	24,834	94.1	1,557	5.9	6,078	74.9	2,035	25.1	34,504
Ohio State University	39,394	94.1	2,453	5.9	8,527	73.1	3,140	26.9	53,514
University of Minnesota	38,337	92.6	3,043	7.4	6,042	57.8	4,410	42.2	51,834
University of Missouri	34,200	90.8	3,433	9.2	5,818	64.5	3,202	35.5	46,653
Michigan State University	30,987	90.4	3,260	9.6	5,937	74.0	2,076	26.0	42,260
University of North Carolina	66,808	89.0	8,274	11.0	11,487	74.7	3,885	25.3	90,454

Table II (cont.)

Institution	Undergraduate				Graduate & Professional				Total
	Resident	%	Nonresident	%	Resident	%	Nonresident	%	
University of Texas	28,000	87.5	4,000	12.5	6,800	85.0	1,200	15.0	40,000
University of Maryland	27,048	85.9	4,428	14.1	4,738	51.2	4,518	48.8	40,732
Indiana University	18,647	83.2	3,764	16.8	3,972	48.3	4,240	51.7	30,623
Iowa State University	14,247	82.2	3,086	17.8	1,312	50.8	1,269	49.2	19,914
University of Iowa	11,411	81.0	2,670	19.0	4,515	62.7	2,675	37.3	21,271
University of Oregon	9,911	78.5	2,699	21.5	1,294	43.5	2,066	56.5	16,270
Purdue University	16,606	75.5	5,377	24.5	2,631	47.9	2,852	52.1	27,466
University of Virginia	6,426	68.6	2,932	31.4	3,004	59.7	2,020	41.3	14,382
University of Colorado	11,135	63.3	6,449	36.7	2,369	61.5	1,512	38.5	21,465
Sub-Total	545,635	85.7	64,515	14.3	112,067	63.6	57,482	36.4	779,699
Totals		610,150						169,549	779,699

All Institutions: Resident - 657,702 (84.4%)
Nonresident - 121,997 (15.6%)

within this table, total Fall, 1974 opening enrollments were placed at 779,699. Of this number, 657,702 or 84.4% were classified as resident students and 121,997 were classified as nonresidents.

Undergraduate enrollments when taken separately yield essentially comparable data; however, when graduate/professional enrollments are viewed separately, a slightly different pattern emerges. Approximately four of every ten students are nonresidents.

Four institutions of higher education - the University of Oregon, Purdue University, the University of Virginia, and the University of Colorado - each reported nonresident undergraduate enrollments in excess of 20% of total undergraduate enrollment. The mean percentage of nonresident enrollments for all 18 institutions was 14.3%. In graduate/professional enrollments, seven institutions - the University of Virginia, the University of Minnesota, the University of Maryland, Iowa State University, Indiana University, Purdue University, and the University of Oregon - each reported nonresident enrollments in excess of 40% of total graduate/professional enrollment. Three of these, Indiana University, Purdue University, and the University of Oregon reported nonresident enrollments in excess of 50% of total graduate/professional enrollments.

With the exception of the University of Washington, all institutions reported that controls were employed to restrict the admission of nonresidents. Nine of these institutions -

the University of Virginia, the University of Missouri, the University of Colorado, Purdue University, Pennsylvania State University, the University of Oregon, Michigan State University, the University of Texas and the University of Maryland - control the admission of nonresident undergraduates through the employment of quota restrictions promulgated either by the institution, state coordinating/governing board, or the state legislature. In addition, three of these institutions - the University of Missouri, the University of Texas, and Michigan State University - impose formal controls to restrict the admission of nonresident graduate enrollments. Again, with the exception of the University of Washington, each surveyed institution of higher education imposed some restrictions on professional enrollments. Table III presents a detailed summary of the controls employed by each institution and the locus of those controls as well as the resulting limitations imposed upon nonresident undergraduate, graduate, and professional enrollments.

Table IV sets forth data relative to those institutions which have nonresident undergraduate controls in effect and compares opening Fall, 1974 nonresident enrollments to the control imposed. As noted in this table, those institutions which have imposed quota restrictions on nonresident enrollments adhered to those controls. Those institutions which employed differential admissions and tuition policies (University of Oregon) or freshmen class controls (University of Colorado) or finite number formulae (University of Virginia) each had in excess of 20% nonresident

Table III

Summary of Controls Employed, Locus of Control and

Resulting Limitations Imposed

Institution	Controls Employed	Resulting Limitations Undergraduate	Graduate	Professional	Imposed By Whom	Date Initiated	Controls Viewed as Necessary
University of Virginia	Yes	Finite Number Formulae Applied for all 3 categories			Vol. by Institution	Oct., '72 Oct., '74	Yes
University of Iowa	Yes	None	None	Law Medicine Dentistry	Vol. by Institution	A number of years	Yes/ Professional
University of Missouri	Yes	15%	15%	Sharply Limited Medicine, Law, Nursing, Vet. Medicine, Dentistry	(1) Undergraduate & Graduate by State Coordinating/Governing Board. (2) Professional - Vol. by Institution	1972 (1) In effect for several years-tightened & made more explicit in last few years. (2)	No/Yes for Professional Programs
Indiana University	Yes	None	None	Medicine Law Dentistry Sharply Limited	Vol. by Institution	Unknown	Yes/ Professional
Iowa State University	Yes	None	None	Vet. Medicine (25%)	Vol. by Institution	Unknown	No

Table III (cont.)

Institution	Controls Employed	Resulting Limitations Undergraduate	Graduate	Professional	Imposed By Whom	Date Initiated	Controls Viewed as Necessary
University of North Carolina	Yes	None	None	Selected Programs	Vol. by Schools Concerned	Not Specified	No
University of Colorado	Yes	Freshman class controls	____	Medicine, Law, Nursing, Health Related Fields	Board of Regents	1968	Yes
University of Washington	No	None	None	None	_____	_____	No
Purdue University	Yes	25%*	None	Medicine Nursing Vet. Medicine	Vol. of Institution	1962	Yes
University of Illinois	Yes	None	None	10% Medicine	Vol. by Institution	1940	Yes/ Professional
Pennsylvania State University	Yes	10%	None**	10% Medicine	(1) Undergraduate-Board of Trustees. (2) Professional & Graduate: Vol. by Institution.	Unknown	Yes

* Has been eased during the last two years.
** Efforts are made to enroll Pennsylvania residents in higher numbers.

Table III (cont.)

Institution	Controls Employed	Resulting Limitations Undergraduate	Graduate	Professional	Imposed By Whom	Date Initiated	Controls Viewed as Necessary
University of Oregon	Yes	(1) Higher Admission Standards (2) Full cost of Instruction charged nonresident	None	Medicine, Law, Nursing, Architecture, Music, Dentistry.	Legislation Coordinating/ Governing Board Vol. by Institution	Approximately 1964	Yes
Michigan State University	Yes	20%	20%	20% Medicine, Osteopathic, Medicine, Veterinary Medicine	Legislature	Approximately 1962-63	No/Yes for Professional Programs
University of California	Yes	None	None	Medicine, Law	Vol. by Institution	Approximately 1972	Yes*
University of Minnesota	Yes	None	None	Medicine, Law (20%), Vet. Medicine, Dentistry	Faculty Policy	Not Specified	No/Yes for Vet. Medicine

* Only as enrollment restrictions are applied.

Table III (cont.)

Institution	Controls Employed	Resulting Limitations Undergraduate	Graduate	Professional	Imposed By Whom	Date Initiated	Controls Viewed as Necessary
Ohio State University	Yes	None	None	Medicine, Nursing, Vet. Medicine, Dentistry, Optometry	Vol. by Institution	Approximately 1969	No/Yes for Professional Programs
University of Texas	Yes	15.1%	15.1%	Law, Nursing	Coordinating/ Governing Board	1960's	Yes
University of Maryland	Yes	20%	None**	Medicine, Dentistry***	Professional Vol. by Institution Undergraduate Board of Regents	Approximately 1969	Yes

** Priority is given to qualified residents
*** Medicine - first priority to Maryland residents - this policy has been practically exclusive; in dentistry nearly so.

undergraduate enrollments as compared to the University of Missouri, Pennsylvania State, and Michigan State Universities which imposed quota restrictions and enrolled less than 10% of nonresidents. The only exceptions to this were Purdue University, the University of Maryland, and the University of Texas which imposed quota restrictions of 25%, 20% and 15.1% and had 24.5%, 14.1% and 12.5% nonresident enrollments respectively.

Michigan State University, the University of Texas, and the University of Missouri are the only institutions which imposed formal controls on the enrollment of graduate nonresidents. With the exception of the University of Texas, both Michigan State and the University of Missouri exceeded the quota set by 6% and 20.5% respectively, yet neither institution exceeded the mean percentage of 36.4% for all institutions. Nine institutions reported that no controls should be employed to restrict undergraduate or graduate enrollments.

Seventeen of the reporting institutions imposed some type of control on the admission of nonresident professional enrollments. Most commonly, controls were placed upon programs in medicine, veterinary medicine, dentistry and law. The majority of these institutions place no specific controls on the admission of nonresidents except to note that enrollments have been limited. The remaining institutions favored quota restrictions as a means to control enrollments. The locus of the control in most instances was the institution. Fourteen of the seventeen institutions reported that controls were necessary to

Table IV

Institutions Imposing Controls on Nonresident Undergraduate Enrollments

Type of Control Compared with Opening 1974 Fall

Undergraduate Enrollments

Institution	Type of Control Imposed	Imposed By Whom	Percentage of Nonresident Undergraduate Fall 1974 Enrollments
Pennsylvania State University	10% Quota Restriction	Board of Trustees	4.8%
University of Missouri	15% Quota Restriction	State Coordinating/ Governing Board	9.2%
Michigan State University	20% Quota Restriction	Legislature	9.6%
University of Maryland	20% Quota Restriction	Board of Regents	14.1%
University of Texas	15.1% Quota Restriction	State Coordinating/ Governing Board	12.5%
University of Oregon	(1) Higher Admission Standards (2) Full Cost of Instruction charged Nonresidents	(1) Legislature (2) State Coordinating/ Governing Board (3) Voluntary by the Institution	21.5%

Table IV (cont.)

Institution	Type of Control Imposed	Imposed By Whom	Percentage of Nonresident Undergraduate Fall 1974 Enrollments
Purdue University	25% Quota Restriction	Voluntarily by the Institution	24.5%
University of Virginia	Finite Numbers Formulae	Voluntarily by the Institution	31.4%
University of Colorado	Freshman Class Controls	Board of Regents	36.7%

guarantee the availability of sufficient space to resident students.

Differential Admission Standards

There is considerable variation from institution to institution in the determination of admission standards for nonresident applicants. In general the standards for non-residents are higher than for resident applicants except in institutions which aspire to or have a national reputation. In these institutions, which traditionally have a higher proportion of nonresident students than do other institutional types, the admissions differential is slight, if any, due to the greater emphasis placed upon academic quality and excellence for all students. Overall, though, admission differentials are reflected in the requirement that nonresident applicants present higher ACT Composite Scores, higher high school grades or rank-in-class, or the possession of some unique or special talent. This latter factor is most apparent in athletics and to a lesser degree in musical or theatrical accomplishments.[14]

Although little information is available concerning the individual practices of colleges and universities vis-a-vis admission standards, the following example of the University of Wisconsin's admissions process reported by Carbone is perhaps representative of many institutional procedures throughout the United States:[15]

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[14]Carbone, op.cit., p. 19

[15]Ibid., p. 18

> When nonresident applications are being considered many institutions merely insist that the students rank in a higher quartile of their high school class. At the University of Wisconsin... it has been traditional to accept in-state students from the upper half of Wisconsin high school classes but to reject all nonresident students who do not rank in the upper one-quarter of their graduating classes. Although the cut-off point may differ, this is the usual method employed by public colleges and universities around the country.

If this procedure does not sufficiently eliminate enough nonresidents from the applicant pool, particularly in those states where quota restrictions are in effect, then the employment of specific cut-off scores on the ACT, CEEB, and other such aptitude measures are utilized to further limit the admission of nonresidents.[16]

Aside from the very real consideration that nonresident education is subsidized by the state, the utilization of higher admissions standards seemingly is based on the notion that since the nonresident profits from the educational experience afforded him by the state not of his domicile then he should bring more to the particular institution in which he is enrolled than the typical resident.

Differential Tuition Policies

Earlier it was noted that nonresident enrollments overall were declining in relation to total student enrollments in the public sector due to the increase in public community or junior colleges and due to the erection of a number of barriers by

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[16] Ibid., p. 18

the states since 1963. Two of these barriers - admission quotas and differential admissions - have been discussed and have illustrated the methods in which these mechanisms control or limit the admission of nonresidents. A third principal barrier and perhaps the most popular in restricting nonresident enrollments is the tuition differential employed in varying degrees by virtually every public institution of higher education.

The range of tuition charged nonresidents is quite broad as reported by Ione Phillips in a recent analysis of tuition charges at state and land-grant universities. In this analysis, it was revealed that ". . . the highest annual charge for nonresident tuition and fees at a public state or land-grant institution was $2,535.50, reported by the University of Vermont. The lowest charge was $480.00, the nonresident charge for tuition at Alabama A & M University, a predominantly black land-grant institution."[17] The differential in tuition charged nonresidents does not correspond exactly to a ranking of tuition charged; however, a positive relationship does, in fact, exist when these two factors are compared. For example, the highest tuition differential evidenced during 1972-73 was at North Carolina State University (a differential of $1,575) which ranked seventh, overall, in tuition charged nonresidents.[18]

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[17]Ione Phillips, Increasing Tuition", in Robert Carbone, Students and State Borders, Iowa City: The American College and Testing Program, 1973, p. 21.

[18]Ibid., p.21

During the past nine or so years this differential has nearly doubled as evidenced by Table V. As noted in this table, the median nonresident tuition charged for the base year 1965-66 was $734.00 reflecting a differential of $423.00 increasing steadily to $1,336.00 in 1973-74 reflecting a differential of $816.00. Overall nonresident tuition increased 82.02% during the nine year period while the differential in tuition charged nonresidents increased 92.90% as compared to an increase of 67.20% for residents. The most dramatic increases occurred during the years 1970-71 and 1971-72 when all institutions of higher education were experiencing peak enrollments. As a result of this unprecedented influx of students, increasing inflation and resulting increases in the total costs of education, many state legislatures responded by raising nonresident tuition to a level which would reflect an approximation of the total cost of instruction. Additionally this increase in nonresident tuition was in response to growing pressure from within the states to limit or at least control the numbers of nonresidents admitted to state institutions of higher learning thereby accommodating or providing more space for state residents. Most recently with the stabilization of enrollments evident in all institutions of higher education and perhaps as one indicator of this trend only a slight increase (1.65%) in the tuition differential was apparent for the state and land-grant universities during 1973-74.

Carbone in a recent survey of 50 major state universities concluded that differential tuition policies have had only a

Table V

State and Land-Grant Universities

Median Tuition Charges for 9-Year Period
1965-1966 1973-1974

	Nonresident Tuition		Differential		Resident Tuition	
	Amount	% Increase	Amount	% Increase	Amount	% Increase
1965-1966	$734		$423		$311	
1966-1967	$782	6.54%	$449	6.15%	$333	7.07%
1967-1968	$850	8.70%	$498.50	11.02%	$351	5.56%
1968-1969	$905	6.47%	$645	29.39%	$360	2.42%
1969-1970	$966	6.74%	$566	-12.25%	$430	19.44%
1970-1971	$1,106	14.49%	$653.50	15.46%	$452	5.23%
1971-1972	$1,260	13.92%	$778.00	19.05%	$482	6.52%
1972-1973	$1,319.50	4.72%	$802.50	3.15%	$517.50	7.37%
1973-1974	$1,336	1.25%	$816	1.65%	$520	0.48%
% Increase over Period		82.02%		92.90%		67.20%

Source: Ione Phillips, Office of Research and Information, National Association of State Universities and Land-Grant Colleges, Washington, D.C., 1973, p.6.

relatively slight effect on the admission of nonresident students as reflected in the following data:[19]

> Only the Universities of Connecticut, North Carolina, North Dakota, and Rhode Island indicated substantial enrollment declines of nonresident students. Illinois and Michigan reported minor decreases; Delaware and Purdue did also but both said the losses were temporary. In contrast, the Universities of Virginia and Wisconsin reported receiving an increased number of applications from nonresidents in spite of tuition increases. More surprising were reports from the Universities of Kentucky and New Hampshire that both the number of applicants and the actual enrollment of nonresident students have increased in recent years.

On the other hand, however, such policies have affected the admission of nonresidents in the smaller less prestigious state colleges. These institutions, which have traditionally attracted fewer nonresident students, are now experiencing substantial declines in the enrollment of out-of-state students.[20] Thus, it appears that little, if any, major changes have occurred in the student mix of the larger state universities, whereas the smaller state institutions' student mix has increasingly become more homogeneous. This finding, particularly in light of the advantages of a broad student mix as discussed earlier, was addressed by Carbone in a most succinct manner:[21]

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[19]Robert F. Carbone, "Future of the Low-Tuition System", Educational Record, Volume 54, Number 4, Fall, 1973, pp. 266-267.

[20]Ibid., p. 267.

[21]Ibid., p. 267.

> The situation can hardly be considered healthy for public higher education as a whole. It is commonly believed that a student population that represents geographic and economic diversity improves the educational environment of a college. If this assertion is correct, recent trends limiting student mobility suggest that many students are in danger of missing one important facet of a higher education. If students at less prestigious colleges are to attain a "well-rounded education", it will be increasingly important to devise ways for these institutions to attract a greater share of students from other areas of the country.

Obviously further increments in the tuition differential would create a comparable situation for the major state universities and further deteriorate the situation of the smaller state colleges resulting in an increased provincialism that would not serve the purposes of a strong egalitarian system of public higher education.

A review of the findings of this section of the report indicates that there is a significant variation in the degree to which nonresident enrollments are controlled in public institutions, as well as in the strategies for control and the locus at which the controls were imposed. It is interesting to note that contrary to popular belief, direct legislative control in terms of quotas is not as pervasive as often times presumed. Rather, it appears that differential tuition policies that discriminate on the economic factor are the most popular means of control. As will be noted in the subsequent section, the question of tuition and fees has formed the basis for the majority of constitutional and statutory issues concerning nonresident students.

OVERCOMING NONRESIDENCY: A CONSIDERATION OF CONSTITUTIONAL AND STATUTORY ISSUES

Traditionally the states have maintained the right to assess nonresidents substantially higher tuition fees than assessed residents. The rationale employed to affirm this position was originally based upon the notion that higher education was a privilege and not a right. More recently, however, the states have justified the tuition differential as both necessary and appropriate on the basis of the following arguments:[22]

- To prevent a heavy influx of people into the state to take advantage of the educational benefits;
- To distinguish between natives and new residents on the basis of their tax contributions to the state; and
- To preserve the fiscal integrity of the state's educational programs.

Central to this basic position and of major concern to nonresidents are the procedures whereby nonresidency status may be overcome. Just as there is considerable variation among the states in establishing residency, there appears to be as much variation between institutions within a state further confusing an already complex situation.[23] Nevertheless, residency, in general, may be established for tuition purposes if the student has been domiciled in a state for a specifiable

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[22]Hendrickson and Jones, op.cit., p.443.

[23]Ibid.

period of time and has fulfilled other obligations commonly associated with state citizenship, such as the payment of state and local taxes, registration of a motor vehicle, possession of a valid driver's permit, and most recently voter registration. The key element in this definition is qualified by the requirement that a prospective resident be domiciled in a state for some specific period of time. Domicile, according to Black's Law Dictionary, refers to "that place where a man has his true, fixed, and permanent home and principle establishment, and to which whenever he is absent he has the intention of returning."[24] Domicile and residence, then, are not the same. While an individual can conceivably maintain residency in several states, he can only be domiciled in one. This distinction is of principal importance because the procedures - whether governed by statute or administrative regulation - under which a student may qualify for lower in-state tuition may require the establishment of domicile in some states, while others may require in addition to this intention a specific period of durational residence.[25] The state of Virginia, for example, specifies that a student may only obtain resident status if he has been domiciled within the state for a period of at least one year. Similarly, a majority of the states now require this durational residency, usually for one year, in addition to the establishment of domicile.

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[24]Black's Law Dictionary, p.572, 1968.

[25]Henry E. Bornstein, "Residency Laws and the College Student", Journal of Law and Education, Volume 1, Number 3, July, 1972, pp. 349-50.

Prior to 1960, a review of the case law surrounding this issue would have yielded little in the way of constitutional and statutory challenges to overcoming nonresidency status. However, during the past twelve-fourteen years a considerable body of legal precedents have emerged. A number of factors appear to be responsible for this change. Primary, though, was a lack of faith in the wisdom of higher fees for non-residents prevalent during the first part of this century.[26] Hendrickson and Jones in a recent article maintained that this lack of faith in the wisdom of such policies" ... centered around the idea that the best way for a developing university to combat provincialism and to establish itself as a more prestigious, cosmopolitan center of learning was to encourage the free interchange of students."[27] As a result of such informal practices little emphasis was placed upon the classification of students as either resident or nonresident. Even when such classifications were made, regulations governing the assessment of higher fees were not always strictly enforced. In fact, prior to 1960, relatively few challenges regarding nonresident tuition fees were adjudicated. Most significant among these was Bryan v. Regents of the University of California.[28] In this case, Miss Bryan, a minor, whose parents had been domiciled in California for eleven months was classified as a nonresident under California

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[26]Hendrickson and Jones, op.cit., p.444.

[27]Ibid., p.444.

[28]188 Cal. 559, 206 P.1072 (1922).

statute which specified a one year durational residency in order to qualify for the lower in-state tuition. Miss Bryan's father brought suit on behalf of his daughter contending that this statute was violative of the clause of the California Constitution guaranteeing Equal Privileges and Immunities to all state citizens. The California State Supreme Court agreed that Bryan was, indeed, a state citizen, but held that the one year qualifying period was not arbitrary or unreasonable and ruled in favor of the defendant institution. In support of this conclusion, the Court cited the state's one year residency requirement for voting stating "... there seems to be no good reason for holding that the legislature may not make a similar classification in fixing the privilege for attending the state university."[29]

Since 1960, adjudication of differential tuition cases have, for the most part, focused on the constitutionality - specifically, Equal Protection and Due Process Clauses of the Fourteenth Amendment - of state policies concerning durational residency; establishment of specific waiting periods to be met prior to enrollment as a condition for residence; and irrebuttable presumption of nonresidence.

Durational Residency

In a case similar to Bryan, Kirk v. Board of Regents of the University of California[30], the plaintiff contended that

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[29] Id.

[30] 78 Cal. Rptr. 260 (Cal. Ct. of App. 1969), appeal dismissed, 396 U.S. 554 (1970).

the state's required one year durational residency was arbitrary and as such was violative of the Equal Protection Clause of the Fourteenth Amendment. Mrs. Kirk, an Ohio resident, had married a California resident and subsequently sought resident status when she enrolled at the University of California later that same year. She maintained that the regulations governing residency promulgated by the University contained a section which provided "the residence of the husband is the residence of the wife" and as such she was entitled to residential status. The University, however, did not agree contending that the durational requirement was applicable to all newcomers. The California Court of Appeals held that this requirement was not arbitrary or unreasonable and did not violate the Equal Protection Clause. Additionally Kirk asserted that the durational requirement violated her constitutional right to interstate travel and presented an irrebuttable presumption of nonresidence. In support of this first assertion - infringement of interstate travel - Kirk cited Shapiro v. Thompson[31] which held that welfare benefits could not be denied on the basis of a one year durational residency period. Specifically this Court ruled:[32]

> Since the classification touches on the fundamental right to interstate movement, its constitutionality must be judged by the stricter standard of whether it promotes a compelling state interest. Under this standard the waiting period violates the Equal Protection Clause.

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[31] 394 U.S. 618 (1969).

[32] Id. at 638

The Court of Appeals in Kirk, however, distinguished between educational and welfare residency requirements maintaining that the degree of infringement upon interstate travel posed by differential tuition policies was less than that for welfare benefits. The very nature of welfare assistance involves food, shelter, and clothing whose absence may cause great risks. No such risks are involved in the lack of higher education. As such, the Court held that the compelling state interest test need not be invoked to determine whether differential tutition policies violated the Equal Protection Clause. The second assertion set forth by Kirk, i.e. irrebuttable presumption of nonresidence, was dismissed summarily. The Court held that the regulations governing residency did, in fact, provide ample opportunity to overcome the nonresident classification by the presentation of evidence to the contrary at some later date.

The decision rendered in Harper v. Arizona Board of Regents[33] presented quite a different view of the durational residency requirement than did Kirk. At issue in this case was the enactment of a durational residency requirement of one year by the Arizona Board of Regents[34]. The Court held that this action was an invalid classification of otherwise bona fide Arizona residents

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[33]No. 111657 (Arix., Pima Co. Super. Ct., May 29, 1970).

[34]Section 15-725 of the Arizona Revised Statutes Annotated (1970) exempted all state residents from tuition and made no reference to or requirement of domicile. Accordingly, the Regents added a one year waiting period provision to their regulations.

and noted in this opinion that residency was a state of mind and could be accomplished at any time after arriving in the state. Interestingly, the Court in support of its decision referred to Shapiro in stating "certainly education is of no less importance than either health or welfare." Thus in Harper no distinction between educational and welfare residency requirements were made as was the case in Kirk.

In another case following the Shapiro rationale, Starns v. Malkerson[35], the central issue, likewise, focused on the durational residency requirement regarding differential tuition policies. The plaintiffs in this case, Lynn Starns and Lynda Mack, had moved to Minneapolis, Minnesota, with their husbands who had obtained employment there upon graduation from the School of Law of the University of Chicago. Both plaintiffs subsequently enrolled at the University of Minnesota where they were classified as nonresidents and were accordingly assessed higher tuition fees than residents. The particular regulation under which the plaintiffs were classified read, in part, as follows:[36]

> No student is eligible for resident classification in the University, in any college thereof, unless he has been a bona fide domiciliary of the state for at least a year immediately prior thereto. This requirement does not prejudice the right of a student admitted on a nonresident basis to be placed thereafter on a resident basis provided he has acquired a bona fide domicile of a year's

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[35] 326 F. Supp. 234 (D. Minn. 1970), aff'd. mem., 401 U.S. 985 (1971).

[36] 326 F. Supp. at 235-36 (emphasis added).

> duration within the state. Attendance at the University neither constitutes nor necessarily precludes the acquisition of such a domicile.

Plaintiffs contended that this regulation created two classes of residents; that is, those who have resided in Minnesota for less than one year and, secondly, those who have resided in Minnesota for over one year. On the basis of this classification the former were required to pay higher non-resident fees while the latter were assessed the lower resident fees. As such, plaintiffs asserted that this classification was unreasonable and violative of the Equal Protection Clause. Plaintiffs, further, claimed that the effect of the one year durational requirement was to deter interstate movement thus infringing a constitutionally guaranteed right. And finally, plaintiffs contended that the durational residency requirement created an irrebuttable presumption of nonresidence. Following the Shapiro argument, plaintiffs contended that this case must be judged against the stricter standard required by the compelling state interest test rather than the traditional equal protection standard.

The Court in ruling on this first issue - unreasonable classification - held that the distinction made between state residents for purposes of tuition assessment was reasonable and rationally related to a legitimate state interest. The one year waiting period, the Court maintained, was a rational attempt by the State to partially equalize the cost of education between residents who have and have not recently contributed

to the State's economy. The Court distinguished this case from Shapiro in two respects. First, the waiting period for welfare assistance" ... had as a specific objective the exclusion from the jurisdiction of the poor who needed or may need relief"[37] and, secondly, the durational residency requirement had the effect of denying the basic necessities - food, shelter, and clothing - in order to sustain life. This, the Court held, was not the case in Starns - no such risks were involved. Therefore the stricter standard of the compelling state interest test was not applicable as the right affected by classification was not a fundamental right.

Moving to the question of irrebuttable presumption of non-residence, the Court pointed out that the regulation did, in fact, clearly provide an opportunity to refute such classification (note citation 36 supra.).

Thus in Starns, as in Kirk, the influence of the Shapiro ruling was further weakened in its applicability to durational residency requirements as related to differential tuition policies.

Establishment of Specific Waiting Periods Prior to Enrollment

This second category of constitutional challenges to differential tuition policies differs from the preceding category in one very important respect. That is, in this latter categorization the student, in order to qualify for resident status, must establish residency prior to enrollment. These policies,

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[37] Id. at 237

in effect, have created a presumption of continuing non-domiciliary status.

In Landwehr v. Regents of the University of Colorado[38] the statute governing residency specified that a student, in order to qualify for resident tuition fees, must have been domiciled within the state for one year prior to enrollment. Landwehr had sought after graduation from the University of Colorado to recover the sum of money he had expended in non-resident fees contending that he had been domiciled in Colorado since entering the University. This statute, Landwehr argued, violated the Fourteenth Amendment's equal protection, due process, and privileges and immunities clauses of the Constitution. The Supreme Court of Colorado, however, disagreed and ruled that the statute was not violative of the Fourteenth Amendment. In a terse statement the Court held that "the classification of students applying for admission to the tax supported University of Colorado into 'in-state' and 'out-of-state' groups is matter for legislative determination. This classification is not arbitrary or unreasonable and is not so lacking in a foundation as to contravene the constitutional provisions..."[39]

In Clarke v. Redeker[40] a State University of Iowa regulation, similar to the statute in Landwehr, required the prospective student to have resided within the state for a period of one

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[38] 396 P. 2d 451 (1964).

[39] 396 P. 2d at 453.

[40] 259 F. Supp. 117 (1966).

year in order to obtain resident status for tuition purposes. Clarke, the husband of a life-long Iowa resident, contested this policy on the following grounds: (1) That the residency requirement violated the Fourteenth Amendment; (2) that his marriage to a native Iowan classified him as a state resident; and (3) that he had demonstrated domicile by his declaration of intent to practice law in Iowa upon his graduation.

The Court, in its ruling, applied the traditional Equal Protection standard; that is, was the classification related to a legitimate state interest. The Court concluded that the regulation was reasonable and rationally related to a legitimate state interest following a similar analysis as employed in Bryan. Clarke's third contention - domiciliary intent - was ordered, by the Court, to be reviewed by the university as being too rigidly interpreted. Subsequently the university did review Clarke's contention of domiciliary intent and reversed its earlier decision. The effect of Clarke did not change the law; it only served to rectify an administrative decision.

Two recent cases, Thompson and Glusman and Lamb represent yet another attack upon presumptive nondomiciliary status. In both of these cases the lower court upheld the plaintiffs' contentions that the requirement of durational residency prior to enrollment was violative of the Equal Protection Clause of the Fourteenth Amendment. However, both cases were appealed by the respective defendants wherein both lower court decisions were reversed.

In Thompson v. Board of Regents of the University of Nebraska,[41] Thompson had challenged the constitutionality of a Nebraska statute requiring that a student must maintain state residency for a period of four months in order to qualify for resident tuition fees. The lower court decision, as noted above, upheld Thompson's contention that the statute violated the Equal Protection Clause; however, the Nebraska State Supreme Court reversed this decision ruling that the classification of students was a legitimate object of state interest. Addressing the durational residency requirement, the Court held that the requirement of four months residency prior to enrollment was ". . . not so burdensome as to forever bar . . ."[42] reclassification.

Similarly in Glusman v. Trustees of the University of North Carolina and Lamb v. Board of Trustees of the University of North Carolina[43] (heard jointly) the North Carolina Supreme Court disagreed with the lower court's ruling. In this case, Glusman and Lamb, both students at the University of North Carolina, contested the constitutionality of a North Carolina statute which provided that resident status at the University could be obtained only by domicile within the state for a period of six months prior to enrollment. In its ruling the State Supreme Court maintained that the six months nonattendance requirement added "objectivity and certainty" to the requirement

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[41] 188 N.W. 2d 840 (1971).

[42] Id. at 844.

[43] 190 S.E. 2d 213 (1972).

of domiciliary intent. Domicile, the Court held, was " ... a matter of physical presence plus the intent to make a home."[44] All students obviously meet this first requirement, although the latter requirement - intent to make a home - is difficult to disprove as it is a concept peculiar to each individual. Thus the Court reasoned "(t)hat the Board of Trustees might have chosen other objective indicators to test the domiciliary intent of applicants for in-state tuition is not to say the one chosen was unreasonable. That there may be hardship cases resulting from the enforcement of these regulations is also not to say they are unreasonable."[45] Therefore the Court held that this classification did not subvert the intention of the Equal Protection Clause of the Fourteenth Amendment and ruled in favor of the defendants.

Irrebuttable Presumption of Nonresidence

In this category constitutional challenges involving the denial of due process and equal protection will be reviewed where a state statute and/or administrative regulation has precluded the nonresident student from obtaining resident status. In essence these regulations require the student to maintain his nonresident status throughout his college career.

In an early case, Newman v. Graham,[46] Newman, a native of Vermont, sought reclassification as an in-state student after

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[44]Id. at 220

[45]Id. at 220

[46]349 P. 2d 716 (1960).

one year claiming that he had established residency and domiciliary intent. The college, Idaho State College, however, disagreed citing the State Board of Education's regulation which read, in part, "any person who is properly classified as a nonresident student retains that status through continuous regular term attendance at any institution of higher learning in Idaho."[47] Further, the Board denied Newman the opportunity for a hearing to present evidence to the contrary. Newman, then, brought suit against the State Board challenging the constitutionality of the regulation on the grounds of denial of due process and equal protection. The Idaho State Supreme Court, as well as the lower court, held the regulation to be arbitrary, capricious, and unreasonable clearly violative of the Equal Protection Clause. Further the Court ruled that the regulation denied Newman the opportunity to show a change of residential or domiciliary status clearly violative of the Due Process Clause of the Fourteenth Amendment.

Robertson v. Regents of the University of New Mexico[48] involved a statute containing a similar provision as that in Newman. The law read as follows:[49]

> No person who was classified as a 'nonresident' for tuition purposes upon his initial enrollment in a public institution of higher education in this state shall have his status changed to that of a 'resident' for tuition purposes unless he has maintained domicile in this state for a

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[47] Id. at 717.

[48] 350 F. Supp. 100 (1972).

[49] Id. at 101

> period of not less than one year during which entire period he has not been enrolled, for as many as six hours, in any quarter or semester, as a student in any such institution.

Robertson, in a class-action suit, challenged the constitutionality of the statute contending it violated the Equal Protection Clause of the Fourteenth Amendment. The Federal District Court held that this law was, in fact, arbitrary and unreasonable violating the Equal Protection Clause as it had created an irrebuttable presumption of lasting nonresidence.

Most recently in Kline v. Vlandis[50] two students at the University of Connecticut challenged the validity of a Connecticut statute which provided that "(t)he status of a student as established at the time of his application for admission . . . shall be his status for the entire period of his attendance . . ."[51] Plaintiffs contended that the statute violated both the equal protection and due process clauses not by classifying them as nonresidents but in denying them the opportunity to refute such classification. The United States District Court of Connecticut held that while the state has the authority to classify students as residents or nonresidents, it does not have the authority to classify students as nonresidents who do not belong in that class. Under this statute, the Court continued, the creation of an irrebuttable presumption of nonresidence" . . . freezes the plaintiffs into the classification of 'out-of-state

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[50] 346 F. Supp. 526 (1972).

[51] Id. at 528.

students' (where) they are required to pay higher tuition and fees than 'in-state students'. Thus, the effect of the statute is to deny the plaintiffs equal protection of the laws in violation of the Fourteenth Amendment."[52] Accordingly judgment was entered for the plaintiffs.

The defendants appealed the District Court's decision and the United States Supreme Court on June 11, 1973 affirmed the lower court's judgment.[53] It is, however, worth noting that while the Supreme Court concurred in the judgment of the District Court, Justice Stewart speaking for the Supreme Court, expressly stated what the decision did not mean:[54]

> Nor should our decision be construed to deny a State the right to impose on a student, as one element in demonstrating bona fide residence, a reasonable durational residency requirement, which can be met while in student status. We fully recognize that a State has a legitimate interest in protecting and preserving the quality of its colleges and universities and the right to its bona fide residents to attend such institutions on a preferential tuition basis.

In summary, then, this section has focused on three categorizations of constitutional challenges to differential tuition policies vis-a-vis durational residency requirements. The constitutionality of assessing higher fees for nonresidents than for residents, though not considered directly, has been established as a valid and legitimate state objective. Johns v.

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[52] Id. at 528

[53] 412 U.S. 441 (1973).

[54] Id. at 452-453.

Redeker, 406 F. 2d 878 (1969); Clarke v. Redeker, 259 F. Supp. 117 (1966); Landwehr v. Regents of University of Colorado, 396 P. 2d 451 (1964); Bryan v. Regents of University of California, 205 P. 1071 (1922). Likewise, durational residency requirements of one year or less which contain rebuttable presumption of residence provisions have been held by the Courts to serve a legitimate state interest. Clarke v. Redeker, 259 F. Supp. 117 (1966); Starns v. Malkerson, 326 F. Supp. 234 (1970); Kirk v. Board of Regents of the University of California, 396 U.S. 554 (1970); Thompson v. Board of Regents of the University of Nebraska, 188 N.W. 2d 840 (1971); Glusman v. Trustees of the University of North Carolina and Lamb v. Board of Trustees of the University of North Carolina, 190 S.E. 2d 213 (1972). Most significantly, the Courts have held that statutes containing irrebuttable presumption of nonresidence provisions to be unconstitutional. Newman v. Graham, 349 P. 2d 716 (1960); Robertson v. Regents of the University of New Mexico, 350 F. Supp. 100 (1972); Vlandis v. Kline Et. Al., 412 U.S. 441 (1973).

CONCLUSIONS

In sum, then, student migration trends, constraints to nonresident enrollments, and a case law review of constitutional challenges to durational residency policies have been examined. The results of this inquiry and its impact upon higher education and the nonresident student, in particular, may be summarized as follows:

- Student migration trends during the past twenty-five years have demonstrated a steadily declining situation for nonresident enrollments in the public sector; however, in terms of absolute numbers more and more out-of-state students will be seeking admission to institutions of higher education throughout the United States. The principal factor in out-migration, as suggested by these studies, appears to be the lack of educational opportunity within a student's home state.

- Of the three primary mechanisms employed by the states to limit or restrict nonresident enrollments perhaps the most popular is the tuition differential. The tuition differential, unlike quotas or differential admission policies, is utilized by virtually every public institution of higher education. During the late sixties the tuition differential was not a barrier to prospective nonresident students. However, in response to growing pressures, i.e. unprecedented rise in enrollments, extensive expansion demands to provide more space for resident students, a majority of states increased the differential to a point where it has now become a major barrier. Recent studies indicate that the smaller state colleges, which have the most to gain from a diversified student body, have been affected the most by such policies. These institutions which have traditionally attracted fewer nonresidents than the major state universities have in the past few years experienced substantial declines in nonresident enrollments and have increasingly become more homogeneous in character. In terms of a desirable student mix and the added benefits of such,

methods should be instituted which will increase the diversity of social, economic, and geographic backgrounds of the students represented on these campuses. Obviously further increments would deteriorate the situation in the smaller state colleges and pose a substantial barrier to the major state universities.

The constitutionality of durational residency requirements vis-a-vis overcoming nonresident status seems fairly well established. States may classify and thus assess nonresidents higher tuition fees than residents on the basis of a legitimate state interest. The requirement of a specific period of durational residence, usually for one year, precedent to the acquisition of resident status has, in general, been ruled by the Courts as constitutional. However, durational residency requirements which present an irrebuttable presumption of nonresidence have been struck down by the Courts as violative of the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

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